REMARKS/ARGUMENT

Applicant responds herein to the Office Action dated July 18, 2002. A Petition for Extension of Time (three months) and the fee therefor are enclosed.

Responsive to the Examiner's objection to the drawings as set forth in paragraphs 1-2 of the Office Action, the applicant has proposed drawing corrections as set forth in the attached. Approval and entry thereof and reconsideration to the objection to the drawings is requested.

The applicant has further responded to the objection to the specification by amending page 18, line 7. Withdrawal of the objection to the specification is requested.

Substantively, claims 1, 3-5, 8, 13, 15, 16 and 18-22 stand rejected on grounds of obviousness over Barritz (5,590,056) in view of Christiano (5,671,412). Claim 2 stands rejected on grounds of obviousness over the aforementioned references, further in view of patent application publication 2002/0023260 to Isman. Claims 7, 11 and 17 stand rejected on grounds of obviousness over the aforementioned references, further in view of Alexander, III (6,055,492). Claims 9, 10, 12 and 14 stand rejected on grounds of obviousness over Barritz and Christiano, further in view of Robert (4,937,863). Finally, claims 23 and 24 stand rejected on grounds of obviousness over Barritz and Christiano, further in view of Pettitt (5,864,620). Reconsideration is requested in view of the following remarks.

The method of claim 1 implicates several steps, including a first step which comprises: "running a first software and determining the capacity of the computer dynamically over time and obtaining computer capacity data" (emphasis added). Secondly, the method implicates the step of: "running a second software that determines the usage of the software products on the computer over time". Lastly, a third step of the invention correlates the usage information obtained by the second software with computer capacity data obtained by the first software in a manner which restates the software usage data "based on dynamic variations over time of the computer capacity data."

As acknowledged and indeed, described in the introductory pages of the instant specification, e.g., page 2, line 19 et.seq., the claimed "second software determines the usage of the software products on the computer over time", constitutes existing technology. One form thereof is represented by the present assignee's SOFTAUDIT product which is described, inter alia, in U.S. patent no. 5,590,056.

Relative to the claimed "first software", the Examiner has relied on the secondary reference, Christiano '412. Respectfully, the applicant's examination of the '412 patent does not disclose any

software program that is run to determine the capacity of the computer. Certainly, there is no program disclosed to do so "dynamically over time".

Indeed, if at all, more relevant than Christiano '412 is the description in the opening paragraphs of the instant specification, where applicant describes the prior art LicensePower/MVS computer program available from the assignee of the present invention which product provides the user with the ability to "scale" usage statistics. See the specification at page 2, lines 13-19. In other words, without even resorting to Christiano '412, the instant specification acknowledges the prior art's ability to scale usage statistics based on "static configurations" which include the speed of the computer and other factors.

But as further pointed out at page 3, commencing with line 15 of the instant specification, the prior has never developed the tools that scale and adjust usage information for non-static systems such as encountered in the environment of mainframe computers, where the capacity and the number of different partitions within these systems "can be dynamically changed as processing needs change".

The emphasis in claim 1 is therefore, on running a specific software -- denominated as the "first software" -- to determine the capacity of the computer "dynamically over time" and thereafter, correlating the usage information obtained by the conventional second software with the computer capacity data obtained by the first software "in a manner which restates the results of the software usage data based on dynamic variations over time of the computer capacity data." (emphasis added).

In first instance, applicant respectfully submits that there is nothing in Christiano '412 that describes any software for determining what that patent refers to as the "environmental resource capacity". Secondly, there is certainly no software which carries out that task to determine an environmental resource capacity "dynamically over time", for the purposes of carrying out the correlation function of the present invention.

At best, Christiano '412 discloses at column 21, commencing at line 34, that: "the environmental resource capacity is preferably determined prior to step 194 by either reading a resource capacity set by the operator of the license management system, or determine the resource capacity using an established method." The reference suggests that this can be done by "examining the current hardware platform or other environmental resource." In effect, Christiano '412 describes an initialization step wherein one looks up the environmental factor and fixes it for the particular license environment. Indeed, the text at column 17, commencing with line 8, suggests that the

environmental resource capacity is a set number, for example, the numerals 2 or 1, which is as used as the "scaler" similar to the prior art scaler which is described at the applicant's introductory page, e.g., page 2, lines 13-18.

The difference between the method of claim 1 and the prior art is described in the opening pages of the instant specification as turning on the difference between relying on static configurations and dynamically changing configurations.

On this important aspect, the Examiner merely comments summarily: "Furthermore, although the invention of Barritz and Christiano doesn't specifically disclose restating the results of the software usage data based on the variations over time of the computer capacity data, it would have been obvious to one having ordinary skill in the art to include this limitation, because the combination would have provided accurate usage data to the user, rather than simply adjusting the usage data without notifying the user." Office Action at page 5.

But as noted above, the applicant contends that the environmental scaler has been treated in the prior art as a constant number that is set for a particular operating environment. The prior art did not perceive of the problem that is typically encountered with mainframe or very large-scale computers where logical partitions and other parameters constantly change the configuration of computers based on dynamic execution of programs and other factors. On this very point, the Examiner is simply relying on logic and purported intuition, alleging that it would have been obvious for one of ordinary skill in the art to bridge the gap between the prior art and the instant invention.

Applicant respectfully traverses this conclusion. Applicant further traverses the notion that Christiano is more relevant than the description of the prior art in the introductory pages of the instant specification. Applicant further respectfully disagrees that Christiano '412 contains any software for determining the environmental resource capacity on which it relies. Even if one supposes that there is such a software in this reference, there is no description that that software operates on a basis that it can dynamically change that "capacity figure" based on constant examination of changing "environmental" conditions within the computer system. Based on the foregoing, applicant respectfully submits that claim 1 clearly distinguishes over the prior art.

Many of the dependent claims introduce and impose further limitations on claim 1 which distances them even further from the prior art. For example, the use of statistical analysis in one environment does not necessarily translate to a teaching to incorporate it in the invention of claim 1.

Dependent claim 7 calls for the development of an index, which represents variations of the computer capacity data over time which is not disclosed in any of the references of record. Similarly, claim 8 speaks of running the first and the second claimed software as separate software programs. This feature is not disclosed in any of the references of record. Another representative example is claim 11, which calls for a specific combination of computer parameters to develop the index, a feature which is not shown in any of the prior art of record. Similar remarks apply to claim 13 through 24.

Newly presented independent claim 25 differs from claim 1 in that it describes the second software as auditing and getting usage information for substantially all of the software on the particular computer system . This is a system that is entirely unrelated to the field of licensing, since only a portion of the programs run on a typical computer are subject to licensing considerations, and even a smaller portion concerns itself with application where the variations of speed on the computer or other environmental factors demand constantly changing mapping of software usage. The secondary Christiano '412 patent is uniquely applicable to and concerns itself only with software application programs that are licensed. In other words, Christiano '412 deals with a system that deals with software programs on a program by program basis and as it relates to the license managing of the specific application programs. This is far afield of the invention defined in the newly presented independent claim 25.

Accordingly, the Examiner is respectfully to reconsider the application, allow the claims as amended and pass this case to issue.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Asst. Commissioner for Patents, Washington, D.C. 20231, on January 21, 2003:

Max Moskowitz
Name of applicant, assignee or Registered Representative

Signature

January 21, 2003
Date of Signature

Respectfully submitted,

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APPENDIX A

"CLEAN" VERSION OF EACH PARAGRAPH/SECTION/CLAIM
37 C.F.R. § 1.121(b)(ii) AND (c)(i)

SPECIFICATION:

Replacement for the paragraph beginning at page 18, line 6:

For completeness and summary, Figure 1 illustrates the usage report system 10 and its constituent components including a section 12 that collects software usage data and stores the raw information in a usage log 14. The component 16 extracts some of the data, stores it in a software usage log 18 and the reporter 20 generates the standardized reports, as in the prior art exemplified by the 5,590,056 patent.

CLAIMS (with indication of amended or new):

1. (AMENDED) A method of normalizing software usage data that is gathered in relation to the execution of software products on a computer, the method comprising the steps of:

running a first software and determining the capacity of the computer over time and obtaining computer capacity data;

running a second software that determines the usage of the software products on the computer dynamically over time; and

correlating usage information obtained by the second software with computer capacity data obtained by the first software in a manner which restates the results of the software usage data based on dynamic variations over time of the computer capacity data.

25. (NEW) A method of normalizing software usage data that is gathered in relation to the execution of software products on a computer, the method comprising the steps of:

running a first software and determining the capacity of the computer over time and obtaining computer capacity data;

running a second software that determines the usage of substantially all of the software products on the computer dynamically over time; and

correlating usage information obtained by the second software with computer capacity data obtained by the first software in a manner which restates the results of the software usage data based on dynamic variations over time of the computer capacity data.

APPENDIX B

VERSION WITH MARKINGS TO SHOW CHANGES MADE
37 C.F.R. § 1.121(b)(iii) AND (c)(ii)

SPECIFICATION:

Replacement for the paragraph beginning at page 18, line 6:

For completeness and summary, Figure 1 illustrates the usage report system 10 and its constituent components including a section 12 that collects software usage data and stores the raw information in a usage log 14. The component 16 extracts some of the data, stores it in a software usage log 18 and the reporter 20 generates the standardized reports, as in the prior art exemplified by the 5,590,056 patent.

CLAIMS:

1. (AMENDED) A method of normalizing software usage data that is gathered in relation to the execution of software products on a computer, the method comprising the steps of:

running a first software and determining the capacity of the computer over time and obtaining computer capacity data;

running a second software that determines the usage of the software products on the computer dynamically over time; and

correlating usage information obtained by the second software with computer capacity data obtained by the first software in a manner which restates the results of the software usage data based on dynamic variations over time of the computer capacity data.